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Cooke Court-Martial Not Tainted, Prosecutors Say

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Air Force prosecutors denied yesterday that the court-martial of 2nd Lt. Christopher M. Cooke has been tainted in any way by the "misunderstandings and mistakes" that led him to believe he could not be tried as a Soviet spy.

"He has been made to appear as the victim of a gigantic conspiracy," Maj. Charles B. Heimborg, a member of the Air Force's trial counsel team, declared at preliminary court-martial proceedings against Cooke. "Nothing could be farther from the truth."

For the last week, the Air Force, as much as Cooke, has been on trial at Andrews Air Force Base while the 24-year-old lieutenant's defense lawyer repeatedly demonstrate that Cooke had been promised immunity if he simply told the truth about his contacts with Soviet diplomats.

The prosecution began its turn yesterday.

By the time "Retreat" sounded last evening, Cooke's chief counsel, Lt. Lee Bailey, had the first two Air Force witnesses scoring points for the defense and the third under bitter cross-examination for producing a story that he said had slipped his mind for months.

Cooke, formerly deputy chief of a Titan II missile crew near Wichita, Kan., began cooperating with Air Force investigators last May 9, four days after he had been picked up with assurances that no prosecution of him was contemplated. Top Strategic Air Command officials abrogated the agreement last May 22, a few hours after Cooke successfully completed a polygraph examination.

Heimborg contended in opening remarks that "the only one who had authority to bind the United States" to the assurance of immunity from prosecution was the then chief of the Strategic Air Command, Gen. Richard Ellis, who recently retired.

Perhaps overlooking the testimony of several Air Force officers called by the defense last week, Heimborg said there was "no evidence that this promise was given by the authority of Gen. Ellis."

Instead, Heimborg submitted, oral assurances received by Cooke and his military lawyer grew out of an innocuous "series of misunderstandings and mistakes" for which the Air Force should not be faulted. Heimborg said that Cooke's interrogators from the Air Force Office of Special Investigations were simply unaware of SAC's "true intentions" to prosecute and that SAC was "kept in the dark" about promises being made by OSI.

Heimborg acknowledged that SAC's chief legal officer, Brig. Gen. C. Claude Teagarden, had approved questioning Cooke without advising him of his rights, a process that began last May 5. But Heimborg insisted that "the general was very reluctant" to endorse the procedure, and he suggested that it should not now be used to bar prosecution.

Yesterday's first witness, Col. Grosvenor H. LeTarte, director of the Air Force Judiciary, said OSI did not want Cooke to be advised of his rights and that Teagarden agreed, at LeTarte's urging, in order to find out what secrets, if any, had been compromised by Cooke on several unauthorized visits to the Soviet Embassy here.

"He said, yes [he had spoken to Gen. Ellis]," LeTarte recalled of a May 5 phone conversation with Teagarden. "He said, in effect, to obtain a damage assessment."

OSI officials testified last week that Teagarden had put them in a quandary by instructing them to advise Cooke of his rights and then to "work around" any requests he might make for a lawyer.

Under cross-examination, LeTarte said he did remember "someone telling me that such a position had been

tie it down to the May 5 date."

LeTarte also testified that informal agreements of immunity, while "against Air Force policy," are "common." He said witnesses given oral promises of immunity with approval of an Air Force judge advocate such as Teagarden are entitled to immunity as long as the commanding general does not withdraw the guarantee.

"Is it a principle of military justice that justice be done no matter what the cost?" Bailey asked.

"I never heard of any such principle," LeTarte replied.

The next witness, Col. Michael P. McRaney, director of public affairs at SAC headquarters in Omaha, Neb., said he prepared a package of expected questions and answers on the Cooke case last May 29 with the help of Teagarden and others.

Bailey pointed out that the prepared script indicated that Cooke had a lawyer during all of his questioning. "They didn't tell you he went four days without a lawyer?" Bailey demanded. "I wasn't aware of that," McRaney replied. "Who gave you that information? Gen. Teagarden?" Bailey pressed. "Yes," McRaney said.

Lt. Col. Olan G. Waldrop Jr., staff judge advocate at McConnell Air Force Base outside Wichita, testified that Teagarden told him last May 27 that the offer approved for Cooke depended on Cooke's having told the truth to Air Force investigators in a statement taken last May 7 and not just on his making a full disclosure starting May 9 when the offer actually was made.

Waldrop also said he did not tell that to the prosecution, or anyone else he could recall, until yesterday morning.

Bailey exploded. Recalling that he had denounced Teagarden as "a liar" last June, in Waldrop's presence, for taking that position, he demanded to know why Waldrop had corroborated the general then